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COGNOVIT NOTES

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- A. Three states have invalidated the use of cognovit notes in all transactions. 1
1. Illinois
 2. Indiana
 3. Kentucky
 4. The Uniform Commercial Credit Code has outlawed the use of cognovit agreements in consumer transactions and consumer loans.
 - a. Ohio also forbids the use of cognovit notes in consumer transactions. 2
 - b. A consumer transaction or loan is defined to include those entered into primarily for personal, family, educational, and household purposes.

1Cognovit Note: An extraordinary note which authorizes an attorney to confess judgment against the person or persons signing it. It is the written authority of a debtor and a direction by him for entry of a judgment against him if the obligation set forth in the note is not paid when due. Such judgment cuts off every defense which the maker may otherwise have and it also cuts off all rights of appeal from a judgment taken on it.
Jones v. John Hancock Mut. Life Ins. Co., 289 F.Supp. 930, 935 (D.C.Mich.)

20.R.C. 2323.13(E)

B. Many states, concerned over potential Due Process abuses, have limited the arbitrary use of cognovit notes.

1. Cognovit notes are not a per se violation of Fourteenth Amendment Due Process. 3

HELD: When the case does not involve overreaching, is not a contract of adhesion, is made for substantial consideration, and the maker knowingly, voluntarily, and willingly waives due process rights to notice and hearing, the agreement is valid.

2. The modern, judicial approach to cognovit notes was established by the California Supreme Court. 4

- a. This new approach employs a stricter standard requiring written notice from the clerk and an opportunity for a court hearing except in the rare case in which the cognovit agreement itself shows it is an agreement fairly negotiated for between equal bargainers.

- b. The United States Supreme Court has recognized this new standard that validates cognovit agreements only if made under appropriate circumstances and the debtor has waived his due process rights. 5

- c. By exacting this requirement of notice and hearing in normal circumstances, the effectiveness of cognovit agreements may have been vitiated judicially.

³D.H. Overmeyer Co. v. Frick, 405 U.S. 174 (1974).

⁴Isbell v. County of Sonoma, 577 P.2d 188 (1978).

⁵Swarb v. Lennox, 405 U.S. 191 (1970)

C. Ohio has not followed this national trend.

1. Lack of prior notice is not sufficient grounds for reversal of a judgment on a cognovit agreement, if valid, and if it constitutes a waiver of due process rights. 6

2. The warrant of attorney to confess judgment, such as that conveyed in a cognovit agreement, must be clear, definite and explicit. 7

- it must also state a specific amount for which judgment is confessed. 8

- these are the only limitations imposed in Ohio, short of certain procedural matters.

3. **WARRANT OF ATTORNEY TO CONFESS JUDGMENT 9**

A. The attorney confessing judgment must produce the warrant of attorney. Jurisdiction in the territory is established if the maker signed the agreement in that territory.

B. The attorney must include in the petition the last known address of the defendant.

C. The court shall then notify the defendant immediately upon entering judgment.

D. The cognovit agreement must be prominently displayed on the loan agreement with the word "warning" in bold, large print.

⁶Matson v. Marks, 291 N.E. 2d 491 (Franklin Co. Ct. of App., 1972).

⁷Spence v. Emerine, 46 Ohio St. 433

⁸Hill v. Buchanon, 21 Ohio Ops. 24

⁹OHIO REVISED CODE SEC. 2323.13 (D)

example:

WARNING: By signing this agreement, you give up your right to notice and a court trial. If you do not pay on time, a court judgment may be taken against you without your prior knowledge and the powers of the court can be used to collect from you regardless of any claims or defenses you may have against the creditor for returned goods, faulty goods, failure on his part to comply, or any other cause or defense.